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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

No. 385

PUERTO RICO TELEPHONE COMPANY,
Petitioner.

ROSA M. FIGUEROA DE ARROYO, IRIS TORRES DE HERNANDEZ, ANDREA COLON TUBENS, IRIS TRABAL QUINTANA, JOSE A. FRANQUI, LUZ ARMINDA TORO TIRADO, BENJAMIN TORRES RIVERA, CARMEN E. DE LA ROSA DE ORTIZ, ELSIE TORRES RAMOS, ALFREDO MOREU IRIZARRY, ELSIE LUGO BERNIER,

AND

SINDICATO DE TRABAJADORES PACKINGHOUSE, AFL-CIO, DISTRITO DE PUERTO RICO AND UNION DE EMPLEADOS DE LA INDUSTRIA DEL TELEFONO DE PUERTO RICO, LOCAL 963,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

MOTION FOR LEAVE TO FILE SECOND PETITION FOR REHEARING AND BRIEF IN SUPPORT THEREOF.

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Now Comes Petitioner, Puerto Rico Telephone Company, and requests that this Court grant its Motion for Leave to File a Second Petition for Rehearing. In support of this motion, Petitioner states that:

1. Recent Court of Appeals decisions, rendered after Petitioner's Petition for Rehearing was denied, seriously conflict with the decision in this case, most particularly with the First Circuit's application of different statutes of limitation in a § 301 action to Employers and Unions. This directly conflicts with a Second Circuit ruling applying the same statute of limitations to both parties. Directly contrary to the First Circuit's conclusion here that the problems inherent in the simultaneous application of differing statutes of limitations were appropriate for Congressional resolution, the Second Circuit concluded that Courts under § 301 must fashion a national labor policy which precludes such disparate statutes of limitation.

2. A recent Sixth Circuit case conflicts with this decision on the question of what conduct constitutes a breach of the Union's duty of fair representation, specifically as to the necessity of a showing of hostility.

3. That denial of this Petition on these important questions of national labor policy can only cause serious disruption for both Employers and Unions.

Wherefore, Petitioner respectfully requests that this Court grant its Motion for Leave to File a Second Petition for Rehearing for the reasons stated above and in its Brief in Support of this Motion.

Respectfully submitted,

MATTHEW E. MURRAY,
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BRIEF IN SUPPORT OF SECOND PETITION FOR REHEARING.

Petitioner recognizes that a second petition for rehearing is unusual, but where a new and conflicting decision by another court of appeals has been rendered after a denial for rehearing, this Court has granted such a petition. *See, e.g., United States* v. *Ohio Power Co.*, 353 U. S. 98 (1957). Such is the case here.

In *Abrams* v. *Carrier Corp.*, 75 LRRM 2736 (2d Cir. 1970), the Second Circuit, on facts completely analogous to those in the case at bar,[1] declared contrary to the First Circuit, on the issue of the applicable statute of limitations, 75 LRRM at 2750:

> "We therefore hold that when a § 301 suit is brought against an employer alleging breach of the collective bargaining agreement in conjunction with a claim that the union breached its fair representation duty to pursue the employee's grievance, the same period of limitations should be applied to both claims."

The First Circuit held that differing statutes of limitations were to apply to Employer and Union in such circumstances and that it is up "to Congress to enact some statute of limitations applicable to both employer and union." 425 F. 2d 281, 286 n. 6 (1st Cir. 1970). The importance of this question to a uniform national labor policy has been outlined in Petitioner's previous petitions before this Court and the necessity for this Court to decide this issue is now underscored by the conflicting decisions of the

1. Both *Abrams* and the instant case arose out of an alleged breach of contract by an Employer for its discharge of senior employees and its retention of junior employees and an alleged breach of the duty of fair representation by the Union in its failure to pursue these discharged employees' grievances.

First and Second Circuits, not only as to the appropriate limitations period, but also as to the appropriate forum, Court or Congress, to decide this question.

In addition, Petitioner has previously pointed to the serious conflict between the First Circuit and other Circuits as to the content of the Union's duty of fair representation. This conflict is highlighted by a recent decision of the Sixth Circuit, also rendered after the petition for rehearing, where it was held, contrary to the instant case, that "hostility, malice, or bad faith" are necessary allegations in a fair representation suit. *Dill* v. *Greyhound Corp.*, 248 Daily Lab. Report A-10 (December 23, 1970).

For the reasons set forth above and in its previous petitions, it is respectfully urged that this Court grant a rehearing of its order of December 7, 1970, denying the petition for a rehearing and that, upon such rehearing, a writ of certiorari issue to the Court of Appeals for the First Circuit.

Respectfully submitted.

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CERTIFICATE OF COUNSEL.

I hereby certify that the foregoing petition is presented in good faith and not for delay and is restricted to grounds certified in Rule 58 of the rules of this Court.

JOEL H. KAPLAN,
Attorney for Petitioner.

CERTIORARI DENIED N.C.R.